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Supreme Court of the United States

OCTOBER TERM, 1931.

No. 487

CANADA MALTING COMPANY, LTD.,
Petitioner,

against

PATERSON STEAMSHIPS, LTD.,
Respondent.

No. 488

BRITISH EMPIRE GRAIN COMPANY, LTD.,
Petitioner,

against

PATERSON STEAMSHIPS, LTD.,
Respondent.

No. 489

HENRY K. STARNES, doing business as H. K. STARNES & COMPANY,
Petitioner,

against

PATERSON STEAMSHIPS, LTD.,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF ON BEHALF OF RESPONDENT.

RAY M. STANLEY,
ELLIS H. GIDLEY,
Counsel for Respondent,
Paterson Steamships, Ltd.

BATAVIA TIMES, LAW PRINTERS,
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BRIEF ON BEHALF OF RESPONDENT.

STATEMENT.

These cases come before the Court upon orders, entered herein on the 30th day of November, 1931, by this Court granting the petition of the petitioners for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit to review its decrees entered in these suits July 28th, 1931 (R. pp. 109-110), affirming the decrees of the United States District Court for the Western District

of New York (Judge John R. Hazel sitting). (R. pp. 85-96.)

The causes were instituted by the filing of libels *in personam* with a prayer for foreign attachment. Jurisdiction over the respondent was obtained under said libels for the seizure of the Steamer *Lachinedoc*, the property of the respondent, at the Port of Buffalo.

The actions are brought for the recovery of damages claimed to have been sustained by the respective petitioners as the owners of a cargo of grain laden on board the Steamer *Yorkton* by reason of the sinking of that vessel following a collision occurring between the Steamer *Yorkton* and the Steamer *Mantadoc* on Lake Superior, July 10th, 1930. Fault is urged solely against the Steamer *Mantadoc*. Respondent is the owner of the Steamer *Mantadoc*. (R. pp. 2-5, 36-38, 41-43.)

The cases were heard in the District Court upon exceptions by the respondent to the libels (R. pp. 8-9, 46-47); together with a suggestion by the respondent, in each suit, that the Court ought not to entertain or exercise further jurisdiction in the cause (R. pp. 7-8, 45-46); and also upon motions by the respondent, made in each suit, upon the libels and upon affidavits, that the Court exercise discretion and refuse to take and entertain further jurisdiction, that it dismiss the libels and remit petitioners to remedies in the Courts of the Dominion of Canada, and for other incidental relief. (R. pp. 5-6, 39-40, 44-45.)

Judge Hazel wrote an opinion granting the motions of respondent, officially reported at 49 Fed. (2nd) 802. (R. pp. 78-82.) Upon petition for rehearing, Judge Hazel wrote a further opinion affirming the prior determination, officially

reported at 49 Fed. (2nd) 804. (R. pp. 83-85.) Decrees were thereupon entered in the respective suits sustaining the exceptions of respondent to the libels, declining to take and entertain further jurisdiction in the causes, dismissing the libels, remitting the petitioners to their remedies in the Courts of the Dominion of Canada, and directing that respondent appear and file security in any action instituted by the petitioners in the Admiralty Courts of the Dominion of Canada. (R. pp. 85-96.)

Upon appeal by petitioners, the Circuit Court of Appeals for the Second Circuit affirmed the decrees of the District Courts; its opinion being officially reported at 51 Fed. (2nd) 1007. (R. pp. 103-108.)

Facts.

The following facts and circumstances appearing in respondent's moving papers, all of which are undisputed, were regarded by the District Court as warranting the refusal to entertain further jurisdiction.

(1) Each of the petitioners, as well as the respondent, are subjects, residents and citizens of the Dominion of Canada. (R. pp. 3, 36, 41.)

(2) Both vessels involved in the collision, *i. e.*, the Steamer *Yorkton* and the Steamer *Mantadoc*, are owned by Canadian corporations and are of Canadian registry. (R. pp. 9, 10, 13, 14, 47, 48, 51, 52.)

(3) The officers and members of the crew of both vessels are Canadian citizens and residents (R. pp. 10, 14, 49, 52) and are not subject to compulsory attendance as witnesses in the District Court. (R. pp. 25, 63.)

(4) The contracts of affreightment for the carriage of the cargo, later damaged as a result of the collision, were made in Canada. (R. pp. 10, 14, 48, 52.)

(5) The cargo, later damaged as a result of the collision, was laden on board the Steamer *Yorkton* at one Canadian port (Port Arthur) for transportation to and delivery at another Canadian port (Montreal). (R. pp. 10, 14, 48, 52.)

(6) Following the collision, the Wreck Commissioner of the Dominion of Canada held a formal investigation as required by law respecting the circumstances of the collision. (R. pp. 19, 56, 30-36.) It was determined by the Dominion Wreck Commissioner that the masters of both vessels were at fault for the collision. (R. pp. 35, 36.)

(7) That an action had been instituted by this respondent in the Admiralty Court of the Dominion of Canada for the judicial determination of liability as between the colliding vessels and their owners. (R. pp. 12, 16, 19, 50, 54, 57.)

In determining to grant the motions made by respondent and to dismiss the libels, the District Court asserted that it was vested with discretion whether to retain or decline jurisdiction, citing *Charter Shipping Co., Ltd. v. Bowring, Jones & Tidy, Ltd.*, 281 U. S. 515. In determining to exercise such discretion, the Court was motivated by the undisputed facts and circumstances recited above. It was found that the circumstances were such that the Court was warranted in refusing to retain jurisdiction, and that no injustice would result to petitioners by remitting the parties to their home forum, it being further said: "That the rule in this Court is more favorable to the cargo owners is insufficient reason for retaining jurisdiction." (R. p. 79.)

Upon application for rehearing, the District Court reiterated the existence of discretion to retain or refuse jurisdiction; and, as an additional reason for declining jurisdiction and relegating the parties to the Courts of the country of their residence and citizenship, cited the Root-Bryce Treaty of 1909 as making the waters of the Great Lakes, with respect to navigation, international waterways equally free to the citizens of Canada and of the United States alike. (R. pp. 83-85.)

The Circuit Court of Appeals affirmed the decrees below. The Court referred to the undisputed facts and circumstances relied upon by the District Court. The arguments of petitioners were considered, it being said by the Court that the most recent statements of this Court did not assert the limitation contended for, citing *Charter Shipping Co. v. Bowring, Jones & Tidy, Ltd.*, 281 U. S. 515, and *Langnes v. Green*, 282 U. S. 531. It was determined that by the provisions of the Root-Bryce Treaty of 1909 (36 Stat. 2448) collisions upon the Great Lakes are to be dealt with as though on the high seas, citing *The Eagle*, 8 Wall. 15, and *The Avon*, Fed. Cases No. 680, and that the law of the flag of the colliding vessels must be applied, *i. e.*, Canadian Law. It was held that the District Court had discretion whether or not to retain jurisdiction, and that there had been no abuse of such discretion in remitting the parties to their home forum. (R. pp. 103-108.)

The record is devoid of any explanation as to the failure of the petitioners to pursue their remedies *in rem* against the alleged offending vessel (The *Mantadoc*) through seizure wheresoever she might be found in any port on the Great Lakes, whether Canadian or American. Nor is there contained in the record any suggestion that petitioners were unable to obtain jurisdiction over this respond-

ent, or to secure an effectual adjudication of the rights of the parties, in their home forum, or to there obtain a full measure of justice.

The sole reason for the institution of these actions in an Admiralty Court of the United States, where all the parties are foreigners, was the desire of petitioners to obtain the benefit of the rule of law enforced in this country, viz., that a cargo owner suffering loss by reason of collision, may, if innocent, recover from the noncarrying vessel involved in the collision, or the owners thereof, the entire amount of such loss, if both vessels were at fault. Whereas, under the rule enforced in Canada, in cases of mutual fault, cargo owner may recover only a moiety of its loss from the noncarrying vessel. (R. pp. 19, 57.) That a finding of mutual fault may be reasonably anticipated is evidenced by the formal report of the Dominion Wreck Commissioner which determined that the masters of both colliding vessels were at fault. (R. pp. 30-36.) The reason for the failure of these Canadian petitioners to resort to their home forum for the adjudication of their rights as against this Canadian respondent is thus made apparent.

While it is understood that the allegations of the libel with respect to the place of collision and the asserted faults of the *Mantadoc* are to be taken as true for the purposes of exceptions and motions to dismiss the libels and are not therefore traversed; nevertheless, in the event that the causes proceeded to the requirement of answer, and such allegations proved to be important by reason of the decision of this Court, traverse thereto would, no doubt, be taken by respondent.

FIRST POINT.

IN EVERY CASE OF SUITS OF A MARITIME NATURE PENDING BETWEEN FOREIGNERS IN OUR ADMIRALTY COURTS, THE QUESTION OF RETENTION AND EXERCISE OF JURISDICTION IS A MATTER OF DISCRETION.

It was argued by respondent in the District Court, and so held, that the question of the retention and exercise of jurisdiction in these causes was one of discretion to be determined by the District Court. This determination was properly affirmed upon appeal by the Circuit Court of Appeals.

Recent expressions of this Court were relied upon in the Courts below as establishing this principle, *i. e.*: *Charter Shipping Co. v. Bowring, Jones & Tidy*, 281 U. S. 515, and *Langnes v. Green*, 282 U. S. 531.

In *Charter Shipping Co. v. Bowring, Jones & Tidy*, this Court said, at page 517:

> "The retention of jurisdiction of a suit in admiralty between foreigners is within the discretion of the District Court. The exercise of its discretion may not be disturbed, unless abused. *The Belgenland*, 114 U. S. 355, 368; *The Maggie Hammond*, 9 Wall. 435, 457."

In *Langnes v. Green*, this Court said, at page 544:

> "Admiralty courts, for example, have complete jurisdiction over suits of a maritime nature between foreigners. Nevertheless, 'the question is one of discretion in every case, and the Court will not take cognizance of the case if justice would be as well done by remitting the parties to their home forum.' *The Maggie Hammond*, 9 Wall. 435, 457; *The Belgenland*, 114 U. S. 355, 368; *Charter Shipping Co. v. Bowring, Jones & Tidy*, 281 U. S. 515, 517."

Reference to the prior decisions of this Court, as well as those of the lower Federal courts, furnish a considerable number of similar expressions of the principle so enunciated.

See:

The Belgenland, 114 U. S. 355, 364;
The Maggie Hammond, 9 Wall. 435, 457;
Panama R. Co. v. Napier Shipping Co., 166 U. S. 280, 285;
Taylor v. Carryl, 20 How. 583, 611;
Davis v. Leslie, 1 Abb. Adm. 123; Fed. Cases No. 3639;
The One Hundred Ninety-four Shawls, 1 Abb. Adm. 317; Fed. Cases No. 10521;
The Bee, 1 Ware 336; Fed. Cases No. 1219;
Bucker v. Klorkgetter, 1 Abb. Adm. 402; Fed. Cases No. 2083;
Meier v. The Brisk, 4 Ben. 252, Fed. Cases No. 9901;
Bernhard v. Creene, 3 Sawy. 230; Fed. Cases No. 1349;
The Infanta, Abb. Adm. 263; Fed. Cases No. 10,030;
Fairgreve v. Marine Ins. Co., 94 Fed. 686;
Goldman v. Furness, Whithy & Co., 101 Fed. 467;
The Iquitos, 286 Fed. 383;
The New Texas, 1926 Am. Mar. Cases 1514.

A. The Exercise of the Constitutional Grant of Admiralty and Maritime Jurisdiction is not Necessarily Mandatory.

Petitioners contended in the courts below and now contend before this Court, that the grant of admiralty and mar-

itime jurisdiction conferred upon the District Court is mandatory, and that with respect to a collision occurring within the territorial limits of the United States no discretion is vested in the District Court to decline jurisdiction.

Section 2 of Article 3 (Clause 1) of the Constitution of the United States extends the judicial power to "all cases of admiralty and maritime jurisdiction." The grant of admiralty and maritime jurisdiction reposed in the District Courts (now embodied in Sections 41 and 371, Title 28, of the United States Code) was enacted by Congress in pursuance of the constitutional provision.

The inclusive provision of "all cases of admiralty and maritime jurisdiction" clearly referred to that system of law then in existence and which was familiar to the framers of the Constitution.

It was said by this Court in *Panama Railroad Company v. Johnson*, 264 U. S. 375, at page 385, 386:

> "As there could be no cases of 'admiralty and maritime jurisdiction' in the absence of some maritime law, under which they could arise, the provision presupposes the existence in the United States of a law of that character. Such a law or system of law existed in colonial times and during the Confederation, and commonly was applied in the adjudication of admiralty and maritime cases. It embodied the principles of the general maritime law, sometimes called the law of the sea, with modifications and supplements adjusting it to conditions and needs on this side of the Atlantic. The framers of the Constitution were familiar with that system and proceeded with it in mind. Their purpose was not to strike down or abrogate the system, but to place the entire subject—its substantive as well as its procedural features—under national control because of its intimate relation to navigation and to interstate

and foreign commerce. In pursuance of that purpose the constitutional provision was framed and adopted. Although containing no express grant of legislative power over the substantive law, the provision was regarded from the beginning as implicitly investing such power in the United States. Commentators took that view; Congress acted on it, and the courts, including this Court, gave effect to it. Practically, therefore, the situation is as if that view were written into the provision. After the Constitution went into effect, the substantive law theretofore in force was not regarded as superseded, or as being only the law of the several states, but as having become the law of the United States,—subject to power in Congress to alter, qualify, or supplement it as experience or changing conditions might require."

See also:

The Lottawanna, 21 Wall. 558;
The Belfast, 7 Wall. 624;
Waring v. Clarke, 5 How. 441.

In the latter case, it was said at page 457:

"There was but one opinion concerning the grant, and that was, the necessity to give a power to the United States to relieve them from the difficulties which had arisen from the exercise of admiralty jurisdiction by the States separately."

The constitutional grant of admiralty and maritime jurisdiction could, and did, import no more, by its terms, than to invest the United States with that system of law then known and recognized; *i. e.,* the familiar general maritime law, both as to its substantive and procedural features.

The grant thus given was not then precisely defined. Moreover, the exact definition of the limits of the grant was difficult by reason of the presumably variant usages pre-

vailing in the states which had theretofore enjoyed the exercise of such jurisdiction, as well as by reason of the complex character of our scheme of government; and because of other factors.

See:

The Lottawanna, 21 Wall. 558;
The St. Lawrence, 1 Black 522.

It is apparent that, following the constitutional grant and the enactment of judicial power in pursuance thereof, there was required of necessity, the future definition of such power and jurisdiction by means of judicial decision, in order to define the limits of the power so granted. In addition, consideration was necessarily to be accorded the subsequent enactments of Congress which altered, modified or supplemented such general maritime law as experience or changing conditions required.

That general maritime law, as so adopted, and as developed and supplemented by judicial decision and Congressional enactment, today constitutes the law of the nation with respect to matters of admiralty and maritime jurisdiction.

See:

Butler v. Boston & S. S. Co., 130 U. S. 527, 557;
Southern Pacific Co. v. Jensen, 244 U. S. 205, 215.

In the latter case it was said at page 215:

"Considering our former opinions, it must now be accepted as settled doctrine that, in consequence of these provisions * * * and further, that, in the absence of some controlling statute, the general maritime law, as accepted by the Federal Courts, constitutes part of our national law, applicable to matters within the admiralty and maritime jurisdiction."

The development of the admiralty and maritime jurisdiction beyond the scope of waters within the ebb and flow of the tide well illustrates the point. It was natural, following the adoption of the Constitution and through the early years of the history of the nation, that the boundary of admiralty jurisdiction should be measured by tide water. It was not until the decision in the case of *The Genesee Chief*, 12 How. 443, that this limitation was determined to be inadequate. Then, by reason of changed conditions, and the development of the country, it was there declared that such jurisdiction extends to all public navigable waters, irrespective of the ebb and flow of the tide; it being determined that the Great Lakes and their connecting waters were among such public navigable waters.

From that decision henceforth, the scope of admiralty jurisdiction over maritime torts was made to depend upon their having occurred either on the high seas or on navigable waters. The locus being made evident, the jurisdiction followed.

See:

Jackson v. The Magnolia, 20 How. 296;
Hough v. Western Transp. Co., 3 Wall. 20;
Rock Island Bridge, 6 Wall. 213;
Exparte Easton, 95 U. S. 68;
Panama R. Co. v. Napier Shipping Co., 166 U. S. 280;
Atlantic Transport Co. v. Imbrovek, 234 U. S. 52.

It would appear clear, therefore, that the jurisdiction of the Admiralty Courts of the United States in cases of maritime torts does not depend upon the territoriality of the waters whereon the maritime tort arose. As is conceded at page 20 of petitioners' brief, innumerable cases might be cited where the admiralty courts of the United States have taken jurisdiction of collisions which occurred on the high

seas or in foreign territorial waters. Clearly, the power to exercise such jurisdiction is not made effectual by reason of the territoriality of the water where the tort occurred, but rather because of the existence of a maritime tort arising upon navigable water, of which tort cognizance is given by the general maritime law, as accepted in the United States.

When such jurisdiction is invoked for the redress of a maritime tort thus arising, it is not necessarily mandatory that the admiralty courts of the United States thereupon exercise such jurisdiction. It is not to be doubted that, in the cases of suits instituted by citizens of the United States seeking redress for a maritime wrong, the admiralty courts of the United States are bound to exercise jurisdiction and afford redress for such wrong, assuming the presence before the Court of the res or the person responsible for the wrong. That is a natural inherent right to which such litigant is entitled by virtue of his citizenship. But when the jurisdiction of our Courts of Admiralty is invoked in suits of a maritime nature between foreigners, such right, incident to citizenship in the United States, no longer obtains and the privilege of so obtaining redress no longer necessarily follows. The jurisdiction of the Court of Admiralty to afford redress for the maritime wrong still remains undoubted, but the question then is one of comity whether such jurisdiction be exercised. In such case, diversity of nationality between the parties tends to invite assumption of jurisdiction; identity of nationality, the refusal.

Thus, in *The Maggie Hammond*, 9 Wall. 435, the underlying principle upon which the suit was based was the existence of a maritime lien given by the general maritime law and hence enforcible in a Court of Admiralty. The action was brought by a Canadian against a Canadian vessel for breach of contract of affreightment. It being established that cargo owner possessed a maritime lien against the

carrying vessel, it was there determined that the question of the enforcement of such a lien was not one of jurisdiction but of comity, as jurisdiction to enforce such maritime lien was clearly conferred upon our courts. In deciding the question of jurisdiction this Court said at page 457:

> "In this country, says Mr. Parsons, it seems to be settled, that our Admiralty Courts have full jurisdiction over suits between foreigners, if the subject matter of the controversy is of a maritime nature, but the question is one of discretion in every case, and the Court will not take cognizance of the case if justice would be as well done by remitting the parties to their home forum."

So also, in the case of *The Belgenland*, 114 U. S. 355 where collision occurred upon the high seas between vessels of different foreign nationality, this Court examined into the question of jurisdiction in maritime actions pending between foreigners in our Courts of Admiralty. It was there said at page 364:

> "Not alone, however, in cases of complaints made by foreign seamen, but in other cases also when the subjects of a particular nation invoke the aid of our tribunals to adjudicate between them and their fellow-subjects as to matters of contract or tort solely affecting themselves and determinable by their own laws, such tribunals will exercise their discretion whether to take cognizance of such matters or not."

The objection there made to the exercise of jurisdiction was, in fact, overruled but it is apparent from the opinion that the controlling reason for the decision was that the controversy was one between foreigners of different nations —arising out of the common law of nations—and hence the maintenance of jurisdiction by our courts was determined to be proper, there being no common home forum to which the litigants might be remitted.

The existence of discretion respecting the exercise of such jurisdiction being established, it is obvious that the principle must obtain, not only concerning suits for the redress of wrongs arising upon the high seas, but also concerning similar controversies arising upon any navigable water to which such admiralty jurisdiction extends. The principle must apply with like effect throughout the whole extent of the realm of admiralty jurisdiction. To concede its application in certain cases and to deny it in others is to employ a limitation not heretofore favored.

The expressions of this Court in the cases of *Charter Shipping Company v. Bowring, Jones & Tidy*, and of *Langnes v. Green*, adequately express the principle. They are based upon authority and express the doctrine that "the Court will not take cognizance of the cause if justice would be as well done by remitting the parties to their home forum."

The decisions cited as authority in support of this contention of petitioners do not deal in any degree with the subject of jurisdiction in admiralty and maritime controversies or with foreigners as parties litigant therein. Cases relating to the obligation of State courts to enforce remedies provided by Federal Statutes or involving the issue of impairment of Federal jurisdiction by State regulation respecting the modes of redress afforded citizens have no relation to the field of admiralty and maritime jurisdiction. Consequently, such citations cannot be regarded as having any authority upon the point as to which they are cited.

It follows that the exercise of the constitutional grant of authority by a Court of Admiralty of the United States is not necessarily mandatory.

SECOND POINT.

THE DOCTRINE OF LEX LOCI DELICTI HAS NO APPLICATION TO CASES OF COLLISION OCCURRING UPON THE GREAT LAKES.

The libels allege that the collision between the Steamers *Yorkton* and *Mantadoc* occurred "about 3 miles northwest of Whitefish Point, on Lake Superior, in American Waters." (R. pp. 3, 37, 41.)

Upon this allegation, petitioners assert that the rights and liabilities of the parties arise entirely under and by reason of the law of the United States, and that hence there is no discretion to decline jurisdiction, even though the suitors are all foreigners of the same nationality having a common forum.

It must be accepted that it was the general maritime law, as then known and understood, which, by virtue of the constitutional grant and subsequent Congressional enactment, became the law of the land for the regulation of rights and obligations growing out of foreign and domestic navigation and commerce.

The provision for jurisdiction of admiralty and maritime cases presupposed the existence in the United States of a law of that character—otherwise there would be no cases of admiralty and maritime jurisdiction.

See:

Panama Railroad Co. v. Johnson, 264 U. S. 375, 385.

The transactions and obligations growing out of water borne commerce are to be determined and adjudicated by

and under the general maritime law. They are not at all concerned with or dependent upon the *lex loci delicti*, or municipal law, in any case where the maritime law furnishes the measure of the obligation.

In *The Lottawanna*, 21 Wall. 558, it was said at page 575:

> "One thing, however, is unquestionable; the Constitution must have referred to a system of law coextensive with and operating uniformly in the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several states, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the states with each other or with foreign states."

See also:

Workman v. City of New York, 179 U. S. 552;
Southern Pacific Co. v. Jensen, 244 U. S. 205.

It is clear that there is created, by reason of the occurrence of collision and as security for the damages suffered, a maritime lien, a *jus in re*. That lien or privilege arises out of, and has its source in, the general maritime law. It may be enforced *in rem* wheresoever the offending ship may be found.

See:

The John G. Stevens, 170 U. S. 113, 115, 122, and cases cited.

That principle is equally applicable to all claims arising in tort which can be enforced in admiralty. *The John G. Stevens, supra.*

However, neither in jurisdiction nor in the method of procedure are our Admiralty Courts dependent alone upon the theory of implied hypothecation—the petitioner may proceed *in personam* if the respondent is within the reach of process.

See:

North Pacific S. S. Co. v. Hall Bros. Co., 249 U. S. 119, 126, and cases cited.

The form of the procedure is immaterial—at most it is but enforcement of the right which emanates out of the collision as the creature of the maritime law. In the case of *Chelentis v. Luckenbach S. S. Co.*, 247 U. S. 372, this Court, at page 384, drew the distinction between rights and remedies thus:

> "A right is a well founded or acknowledged claim, a remedy is the means employed to enforce a right or redress an injury."

A collision occurring on any public navigable water, whether on the high seas, the Great Lakes or in foreign waters is solely justicable because the general maritime law provides a lien, a right or privilege, arising therefrom, which right is not dependent upon the mere place of the collision or the municipal law effective thereat.

A. The Great Lakes and Their Connecting Channels Constitute Public Navigable Waters, Irrespective of the Location of the International Boundary.

The location and existence of the international land boundary separating the United States and Canada, and extending, by virtue of the treaty provision, through the Great Lakes and their connecting waterways has no controlling

effect over the rights and obligations of parties arising from navigation and commerce upon these waters.

During approximately the first half-century following the adoption of the Constitution but little was known nationally respecting the character and importance of the Great Lakes as avenues of navigation and commerce. The thirteen original states bordered upon tide water and the English doctrine of the limitation of admiralty jurisdiction to the ebb and flow of the tide was naturally accepted.

With the passage of time, the development of the nation westward, particularly along the interior waterways, carried with it a substantial development of navigation and commerce upon the Great Lakes. In 1851 this Court examined the question of admiralty jurisdiction, as related to those waters, in the case of *The Genesee Chief*, 12 How. 443. It was there determined that the ebb and flow of the tide no longer measured the extent of admiralty jurisdiction, but that such jurisdiction was made to depend upon the navigable character of the water—if it was navigable, it was public, and, if public, "within the legitimate scope of the admiralty jurisdiction conferred by the Constitution." It was there said at page 457:

> "The lakes and waters connecting them are undoubtedly public waters; and we think are within the grant of admiralty and maritime jurisdiction in the Constitution of the United States."

In 1868, in the case of *The Eagle*, 8 Wall. 15, where a collision occurred between vessels of the United States upon the Canadian side of the Detroit River, this Court further considered the subject because of the questions of law there involved. It was there argued that the laws of

the United States had no extra-territorial force, and that since no lien for collision was then given under the laws of Canada, none could be created. After referring to the prior decision in *The Genesee Chief* and cases following, it was there said at page 20:

> "It follows, as a necessary consequence of this interpretation of the grant in that instrument, the District Courts, upon which the admiralty jurisdiction was exclusively conferred by the Judiciary Act of 1789, can take cognizance of all civil causes of admiralty jurisdiction upon the lakes, and waters connecting them, the same as upon the high seas, bays and rivers navigable from the sea. These waters fall within the same category, and are subject to the same jurisdiction, and hence the circumstance that a portion of them lie within the limits of another sovereignty constitutes no objection to the exercise of this power."

In *United States v. Rodgers*, 150 U. S. 249, this Court gave full consideration to the nature and character of the Great Lakes, with reference to the question of jurisdiction, arising under a Federal Statute, over a crime committed on board a vessel of the United States, while the vessel was within the territorial limits of Canada. It was there said at page 265:

> "We do not accept the doctrine that, because by the treaty between the United States and Great Britain the boundary line between the two countries is run through the center of the lakes, their character as seas is changed, or that the jurisdiction of the United States to regulate vessels belonging to their citizens navigating those waters and to punish offenses committed upon such vessels, is in any respect impaired. Whatever effect may be given to the boundary line between the two countries, the jurisdiction of the United States over the vessels of their citizens navigating those waters and the persons on board remains unaffected."

Again, in *Panama Railroad Co. v. Napier Shipping Co.*, 166 U. S. 280, it was held that a Court of Admiralty of the United States had jurisdiction over a cause of action which arose in the waters of a foreign power, express reference to the connecting waterways of the Great Lakes being made thus at page 285:

> "Indeed, large numbers of collisions arise upon the Canadian side of the St. Clair, Detroit and St. Lawrence rivers, which would not be cognizable in our courts, if the general proposition claimed by the appellant were true, since by the treaty between this country and Great Britain the boundary line is located in or near the center of the river."

That the question was clearly regarded as settled is apparent from the later decision of this Court in *The New York*, 175 U. S. 187. In that case, two steamers of American registry and ownership were in collision, concededly upon the Canadian side of the Detroit River, the *Conemaugh* almost immediately thereafter striking the Canadian bank and there sinking. Eminent admiralty counsel were engaged in the case throughout its devious course. It is significant that nowhere in the various reports of that litigation is there suggested the proposition here urged. It must be accepted that not only counsel, but this Court as well, then regarded the question of jurisdiction over a collision occurring within the territorial limits of Canada as entirely unaffected by the location of the International Boundary.

In the lower courts, the earliest case relating to the exercise of jurisdiction by our Courts of Admiralty concerning matters arising upon the Great Lakes appears to be that of *The Young America;* Newb. 101, Fed. Cases No. 12549. That was a libel for collision occurring in the Wel-

land Canal. Objection to the jurisdiction was overruled and it was held that the waters of the Welland Canal constituted navigable waters within the admiralty and maritime jurisdiction of the United States.

Extensive consideration was accorded the subject in the case of *The Avon*, Brown Adm. 170, Fed. Cases No. 680. There libel was filed *in rem* in the Northern District of Ohio against a Canadian schooner for the recovery of damages received by the propeller *Avon*, an American vessel, as a result of collision occurring between the vessels in the Welland Canal. Jurisdiction was maintained and decree entered against the Canadian vessel, although it was strongly urged by the claimant that since the law of Canada then gave no lien, none could be enforced in our Court, and that there was no jurisdiction here for wrongs occurring upon this artificial waterway wholly within the territorial limits of Canada. In a lengthy and carefully reasoned opinion, upon appeal, Circuit Judge Emmons held that the general maritime law was supreme, except where a sovereign power had expressly excluded the application of such law; that the lien arising from collision given by the general maritime law as universally recognized was enforcible wherever the ship might be found; and that the waters of the Welland Canal as used for international commerce, are within the admiralty jurisdiction of the United States. Jurisdiction was maintained and the decree below affirmed.

The case of *The Avon* was later referred to with approval by this Court in *Panama Railroad Co. v. Napier Shipping Co., supra*, in determining that torts originating within the waters of a foreign power may be the subject of a suit in a domestic court. Again in the case of *Perry v. Haines (The Robert W. Parsons)*, 191 U. S. 17, this Court

again referred to the decision in the case of *The Avon* upon the proposition that the jurisdiction of the Admiralty Courts is settled as to the waters of any artificial canal which is the means of communication between ports and places in different states and territories, thus suggesting an additional reason as to the inapplicability of the contention of libelants.

Reliance has been placed by the libelants on the case of *Smith v. Condry*, 1 How. 28, as authority that the local law of the place of collision should govern. The collision there occurred between two American ships in the Port of Liverpool while the defendant's vessel was passing out of the port in charge of a Liverpool pilot, whose employment was compulsory under English statutory law. It was there contended that since the ship was exclusively in the pilot's charge, the owner and master were excused by the statute. This was held in the case, it being said at page 33:

> "The collision having taken place in the Port of Liverpool, the rights of the parties depend upon the British statutes then in force; and if doubts exist as to their true construction, we must of course adopt that which is sanctioned by their own courts."

This decision was urged in the case of *The Eagle, supra*, as authority for the assertion that the local law of the place of collision should govern. This Court, in considering the argument, there pointed out that all vessels entering or leaving a domestic or foreign port were bound to obey the laws and usages of that port and when so submitting, they are entitled to all the protection thereby afforded. It was said, (8 Wall. p. 22), in overruling the asserted effect of *Smith v. Condry*, together with a further case occurring similarly:

"These are exceptional cases, and furnished no rule to the Court below for the trial of the collision in question. It was tried there, as it should have been tried, according to the practice and principles of the Courts of Admiralty of this country, wholly irrespective of any local law."

The same contention was later made by the claimant in the case of *The Avon, supra.* It was there held that it was not enough *per se* that a collision happens where there is municipal power to exclude the maritime rule, but that it must further appear that it has actually done so; that the application of the doctrine of *lex loci delicti* does not necessarily apply to a marine tort as it would to a trespass within the real territory of the sovereign; and that it is not enough merely to ascertain the nature of the local code regulating wrongs generally in the nation, but that the equally important inquiry is—has the government declared that the municipal law shall be enforced upon foreign ships to the exclusion of the maritime rule? This, says the Court, is what is meant by the expression in *The Eagle* that *Smith v. Condry* was an exceptional case. *The Avon* holds that since Canada had failed to impose its municipal law over the Welland Canal, wholly contained within its territory, and which had been opened to the commerce of the world, the maritime law remained supreme. The decision rests upon its own reasoning, leaving *The Eagle* as determinative that the local laws are inapplicable in cases of collision occurring upon the waters of the Great Lakes.

The acceptance of the contention advanced by petitioners would necessarily involve the overruling by this Court of the decision in *The Eagle, supra,* as well as the principle enunciated in *United States v. Rodgers;* and also the ignoring of the cogent reasoning upon which is based

the decision in *The Avon, supra.* In addition, to accept petitioners' contention would require the determination that *The New York, supra,* was wrongly decided. If Canadian law should have been there applied because the collision occurred, and the loss was sustained, in Canadian waters; then this Court, having there found mutual fault, would *not* have awarded to the *Conemaugh's* cargo underwriters a full right of recovery of damage as against *The New York,* and the owners of *The New York* would *not* thereafter have been put to the necessity of bringing suit for contribution against the owners of the *Conemaugh.*

See:

Erie R. Co. v. Erie & W. Transp. Co., 204 U. S. 220.

Rather, if there required to apply the doctrine of *lex loci delicti,* would this Court have determined that the *Conemaugh's* cargo interests could recover *only* the measure of loss and damage given by the Canadian rule as against the noncarrying vessel, *i. e.,* a moiety of such loss and no more. The mere statement should be a sufficient refutation of the claim.

We, therefore, take it to be settled that the Admiralty Courts of the United States have jurisdiction over causes of collision occurring between American vessels while in foreign waters; and similarly that a collision between American vessels occurring in Canadian territorial waters upon the Canadian side of the international boundary extending through the Great Lakes will be adjudicated in the Admiralty Courts of the United States according to the maritime law as applied therein.

Is not the converse equally true?

Concededly, the Courts of Admiralty of Canada have jurisdiction of the case of a collision between Canadian vessels occurring in Canadian territorial waters, in which event the maritime law as understood in Canada would be applied. Such Canadian vessels and their owners are hardly to be deprived of their rights under Canadian law merely because collision between them occurs upon the American side of the international boundary line.

Practically speaking from the viewpoint of navigation, if the mere location of the international boundary line is to be the determining factor in determining liability and the measure of recovery for collisions occurring upon the Great Lakes, there will always first arise in every such case, the necessity of primarily determining the exact point of collision, in order to thus determine the law applicable thereto. Such would, indeed, be an absurdity for such a determination often could not be made with any practical certainty because of the difficult conditions of navigation which frequently obtain. A practical example of such difficulty is found in the present record where, because of fog, the masters of the colliding vessels were obviously indefinite as to the precise location of the collision, it appearing that upon the investigation by the Dominion Wreck Commissioner following the collision, they respectively located the place of collision at points six miles apart. (R. pp. 68, 69.) Again, suppose the collision occurred upon the exact boundary line, as would be altogether possible in the confined channels of the Detroit, St. Clair and St. Mary's Rivers, or even in the open waters of the lakes. In such case, would the Court apply the Canadian law or the law of this forum?

Certainly, the tremendous commerce of the Great Lakes has not been carried on and highly developed under

such a limitation. Rather, the vessels of either country alike have freely navigated the waters of the Great Lakes without consideration of the location of the boundary line; of necessity sometimes upon one side of the boundary and sometimes upon the other. In following the accepted courses and channels, numerous instances might be cited where vessels of each country are navigated without hindrance wholly within the territorial limits of the other nation. Not only this, but the navigation and pilot rules, as promulgated by each nation, have been harmonized in content and language because of such common usage and to thereby minimize the possibility of damage occurring upon such waters. Such harmonization was judicially noticed by this Court in the case of *The New York, supra.*

It results that the construction here contended for, would prove to be a grave deterrent to the maintenance and development of the tremendous commerce upon the Great Lakes, as well as destructive of the maritime harmony and international good will now existent upon these waters.

B. The Great Lakes Possess All the Characteristics of High Seas.

The waters of the Great Lakes constitute high seas in very fact.

Extending along the northern boundary of the nation a distance of twelve hundred or more miles, their waters make up the largest body of fresh water on the globe. Their aggregate area of nearly one hundred thousand square miles exceeds the area of many bodies of water which are geographically designated as seas and closely

approaches the area of the Mediterranean Sea. Modern freight and passenger vessels, of large size and tonnage, both domestic and foreign, navigate their waters throughout their entire extent; and, in so doing, are subjected to all the incidents of navigation common upon the oceans.

That the Great Lakes possess every essential characteristic of high seas has heretofore been determined by this Court.

See:

The Genesee Chief, supra;
United States v. Rodgers, supra;
Illinois Cent. R. Co. v. Illinois, 146 U. S. 387; 435;
Moore v. Am. Transp. Co., 24 How. 1, 38.

Emphasis to such determination is lent by the tremendous growth and increase of the commerce, both foreign and domestic, now borne upon these waters. Iron ore, coal, grain and stone are transported thereon in vast quantities. In addition, the movement of package freight and other commodities in such commerce is of enormous size. It is stated by an authority that the tonnage passing through the Sault Ste. Marie canals alone during the period between 1895 and 1912 increased approximately from fifteen million to seventy-two million tons. During the same period, with the development in size and carrying capacity of modern lake freight vessels, the average cargo increased from eighteen hundred tons to upwards of seventy-seven hundred tons, while the number of cargo vessels, both American and Canadian, was proportionately increased.

See:

Proceedings of International Joint Commission In Re Livingstone Channel, pp. 202-206. Government Printing Office, 1913.

Such growth in commerce upon these waters is readily understood when it is observed that a substantial portion of the needs of the population of both great nations bordering upon these waters is served through the agency of such commerce.

It is a matter of common knowledge also that the ships of many of the maritime nations of the globe navigate the waters of the Great Lakes as freely as do the ships of Canada and the United States.

As bearing upon this proposition, it is significant that Congress, in adopting the Shipping Act (Act Sept. 7, 1916; U. S. Code, Title 46, Chapter 23, Sec. 1) defined the term "common carrier by water in interstate commerce" as meaning a common carrier engaged in the transportation by water of passengers or property "on the high seas or the Great Lakes" on regular routes from port to port between different States, Territories, Districts or possessions of the United States, or between places in the same Territory, District or possession. Similarly in the identical Section, the term "common carrier by water" was defined as meaning a common carrier by water in foreign commerce or a common carrier by water in interstate commerce on "the high seas or the Great Lakes" on regular routes from port to port. Reference to the Congressional Record (64th Congress, 1st Sess. Vol. 53, pts. 12 and 13, pp. 12363, 12793-12800) shows clearly that Congress made no distinction whatever between the high seas and the Great Lakes. The definition in the bill as originally passed in the House had omitted any limitation as to the waters to which the Act should apply, thus bringing within its purview all interstate carriers by water whether operating upon the high

seas, the Great Lakes or upon rivers. This was amended in the Senate, however, to read as now contained in the enactment. It appears from the reference to the Congressional Record that the intent of Congress, in so enacting the measure, was to eliminate from the bill reference to inland waterways, such as rivers, and to confine its regulatory features to commerce on the high seas and on the Great Lakes. It is clear, that for this important national purpose, it was thought proper to place the commerce upon the high seas and on the Great Lakes upon an identical basis with no differentiation between them. It is thus apparent that, in so enacting the Shipping Act, the legislative branch of the National Government regarded the waters of the high seas and the Great Lakes as essentially similar for the important purposes of commerce.

C. By Virtue of Treaty Provision, the Waters of the Great Lakes Constitute High Seas for All Essential Purposes of Navigation and Commerce.

Commencing with the Treaty of Paris of 1783, wherein a boundary line between Canada and the United States was originally fixed, and the Jay Treaty of 1794, wherein the right of common navigation was stipulated in favor of the citizens and subjects of both countries, the exercise of the rights of navigation and commerce upon the waters of the Great Lakes by the inhabitants and vessels of the two nations has been provided by international treaty stipulation.

The last and most significant treaty is the Root-Bryce Treaty of 1909 (36 Statutes at Large 2448). That treaty was the result of the labors for some years of the International Waterways Commission created in 1902 by concurrent legislation of the Governments of the United States and of the Dominion of Canada for the purpose of investi-

gating and reporting as to "the conditions and uses of the waters adjacent to the boundary between the United States and Canada, including all the waters of the lakes and rivers whose natural outlets is by the river St. Lawrence to the Atlantic Ocean." Reports and recommendations being made by such commission from time to time, negotiations were entered into between the two Governments, culminating in the Root-Bryce Treaty. Its importance to the inhabitants of the two nations is manifold.

Papers Relating to Work of International Joint Commission, Ottawa, 1929. (Article by William H. Smith, Secretary-American Commission, pp. 101, 103, 104.)

The Root-Bryce Treaty provides as follows:

"TREATY
Between
THE UNITED STATES AND GREAT BRITAIN
RELATING TO BOUNDARY WATERS, AND QUESTIONS ARISING BETWEEN THE UNITED STATES AND CANADA.

The United States of America, and his Majesty the King of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, Emperor of India, being equally desirous to prevent disputes regarding the use of boundary waters and to settle all questions which are now pending between the United States and the Dominion of Canada involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along their common frontier and to make provision for the adjustment and settlement of all such questions as may hereafter arise, have resolved to conclude a treaty in furtherance of these ends, and for that purpose have appointed as their respective plenipotentiaries:

The President of the United States of America, Elihu Root, Secretary of State of the United States; and

His Britannic Majesty, the Right Honorable James Bryce, O. M., his Ambassador Extraordinary and Plenipotentiary at Washington;

Who, after having communicated to one another their full powers, found in good and due form, have agreed upon the following articles:

PRELIMINARY ARTICLE.

For the purposes of this treaty boundary waters are defined as the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers and waterways, or waters flowing from such lakes, rivers and waterways, or the waters of rivers flowing across the boundary.

ARTICLE I.

The High Contracting Parties agree that the navigation of all navigable boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries equally, subject, however, to any laws and regulations of either country, within its own territory, not inconsistent with such privilege of free navigation and applying equally and without discrimination to the inhabitants, ships, vessels, and boats of both countries.

It is further agreed that so long as this treaty shall remain in force, this same right of navigation shall extend to the waters of Lake Michigan and to all canals connecting boundary waters, and now existing or which may hereafter be constructed on either side of the line. Either of the High Contracting Parties may adopt rules and regulations governing the use of such canals within its own territory and may charge tolls for the use thereof, but all such rules and regulations and all tolls

charged shall apply alike to the subjects or citizens of the High Contracting Parties and the ships, vessels, and boats of both of the High Contracting Parties, and they shall be placed on terms of equality in the use thereof."

The subsequent provisions of the Treaty provide for limitation upon the further use or diversion of boundary waters upon either side of the boundary, and for the creation of an International Joint Commission to which there shall be referred for decision questions or matters involved in the provisions thereof. It is, we think, proper to suggest that the provisions of the Root-Bryce Treaty create new international law applicable to boundary waters, representing, as it does, the studied assent of the peoples of the two neighboring countries to a method of international conciliation for the prevention of disputes regarding the use of such boundary waters.

From the provisions of this treaty, it is apparent that, irrespective of the existence and location of the geographical boundary line between the two countries, the entire body of water of each of the boundary Great Lakes and their connecting channels constitute boundary water from main shore to main shore. Thereby emphasis is lent to the language expressed in the case of *The Avon, supra,* where in referring to the decision in *The Eagle, supra,* it was said (2 Fed. Cases, p. 260):

> "It occurred in boundary waters, the vessels were all American, exercising an international right in circumstances where, without exception, it has ever been held the local laws were inapplicable."

Under such definition and treaty provision, the common right of navigation and commerce upon such boundary waters, directly secured to the inhabitants and ships of both

countries equally, is provided to be only subject to such laws and regulations of either country within its own territory, as (a) are "not inconsistent with such privilege of free navigation," and (b) as apply "equally and without discrimination to the inhabitants, ships, vessels, and boats of both countries."

It is provided that during the life of the Treaty, the same right of navigation shall extend to the waters of Lake Michigan and to all canals connecting boundary waters. This is but a restatement and extension of the similar provisions respecting the reciprocal rights of navigation on Lake Michigan and the Canadian canals and St. Lawrence River provided by the Treaty of 1854 and again stated in the Treaty of 1871. No national sovereignty is relinquished thereby as to waters such as Lake Michigan, the Welland and St. Lawrence Canals. Such waters are wholly contained within the territorial limits of the respective contracting nations. They constitute important adjuncts in the realm of commerce, because of which freedom of navigation is reserved thereon for such period of time as the treaty "shall remain in force." This provision is to be regarded as constituting an additional privilege to the right of navigation upon all *navigable boundary waters* which, it is provided, shall "forever continue."

In view of the plain import of the provisions of the Root-Bryce Treaty, the conclusions reached by the Acting Secretary of State in 1894 (quoted on page 13 of petitioners' brief) are not to be recognized as authoritative expression of the current status of these waters. The subject of fishing rights concerning which the opinion was rendered, has been since settled by treaty stipulations specifically disposing of matters in dispute relating to fisheries, and con-

stituting an International Fisheries Commission (Treaty of April 11, 1908). Similarly, the question of wrecking privileges was settled by the treaty stipulations entered into between Great Britain and the United States, in which reciprocal rights for such purposes in the Great Lakes and their connecting waterways were granted. (Treaty of May 18, 1908, Article II.)

Nor is the ownership of the lands under the water of the boundary Great Lakes affected by the treaty. No cession of such under water lands is provided in the treaty. It presumes to deal only with the reciprocal use of the waters of the boundary lakes and connecting waterways for navigation for the purposes of commerce; leaving the sovereign ownership of the lands beneath such waters in the respective states. Such right of ownership in the several states has always been, and still is, subject to the paramount right in the Federal Government to control the navigation of the waters covering such lands for the purposes of commerce, both interstate and foreign.

In view of the provisions of this Treaty any application of the doctrine of *lex loci delicti* in these causes would be unwarranted. The true intent of these treaty provisions is to free such privilege of navigation and commerce from the incubus of any local law or regulation not applying equally to the inhabitants and vessels of both countries, and to extend such privilege alike to the inhabitants and ships of both countries over the whole of such boundary waters. For purposes of navigation, as a result of the treaty, the territorial boundary line between the two countries ceases to exist in those waters therein defined as "boundary waters." The entire body of water of Lake Superior is alike Canadian and American so far as navigation is concerned. The treaty provisions clearly sustain such

international rights, thus granting to navigation and commerce upon these waters the same essential characteristics as upon the high seas where all are equal.

D. The Canadian law would be applied, if invoked.

If the reasoning contained in the foregoing portions of this brief is sound, it necessarily follows that if the District Court had retained jurisdiction, the controversy would have to be determined according to the rules of the Canadian law, assuming that the provisions of that law were invoked by respondent.

This conclusion is fully supported by the following decisions of this Court:

The Genesee Chief, 12 How. 443;
The Eagle, 8 Wall. 15;
United States v. Rodgers, 150 U. S. 249;
Panama Railroad Co. v. Napier Shipping Co., 166 U. S. 280;
The New York, 175 U. S. 187;
The Scotland, 105 U. S. 24;
The Belgenland, 114 U. S. 355;
The Eagle Point, cert. denied, 201 U. S., 644 (Reported at 142 Fed. 453).

The cases cited include disasters upon the oceans as well as upon the Great Lakes and their connecting waters. A collision between two American ships occurring upon the waters of the Great Lakes would clearly be adjudicated in our Courts according to the maritime law as accepted and applied in the United States. A collision between ships of two different nations occurring upon these waters would similarly be adjudicated in our courts according to the provisions of the maritime law as understood in the United

States, unless perhaps in the event that the same system of law was accepted by both such nations; in which case such law, if shown to the court, would be followed. But when a collision occurs between two Canadian vessels upon these waters, our forum, when called upon to settle the rights of the parties, would assume that they are subject to the provisions of the maritime law of Canada as evidenced by their common flag, and would apply such law, if the same be invoked by the respondent. This is so even though such law as accepted in Canada differs from the maritime law as understood in the United States, for such law of Canada is the maritime law which the parties mutually acknowledge. That is the law with respect to which the parties dealt and under which they established their rights in embarking upon this venture in the realm of commerce; similarly that is the law under which the ships were operated and for the violation of which the masters were held at fault following the disaster. The application of Canadian law to the facts and circumstances here present is complete.

In the case of *Cuba R. R. Co. v. Crosby*, 222 U. S. 473, it was said at page 480:

> "But it should be remembered that parties do not enter into civil relations in foreign jurisdictions in reliance upon our courts. They could not complain if our courts refused to meddle with their affairs, and remitted them to the place that established and would enforce their rights. A discretion is asserted in some cases even when the policy of our law is not opposed to the claim. *The Maggie Hammond*, 9 Wall. 435. The only just ground for complaint would be if their rights and liabilities when enforced by our courts, should be measured by a different rule from that under which the parties dealt."

The practical result of adoption of the petitioners' theory would be to overturn the settled law as illustrated by

the cited cases; to disturb the maritime harmony and international good-will existent between the two nations bounding upon the Great Lakes; as well as to create a situation wherein shippers and shipowners engaged in the already highly developed field of international commerce upon these waters would be wholly uncertain as to the ultimate measure of their rights and obligations when so embarking thereon. Moreover, the adoption of petitioners' theory would serve as an invitation to alien litigants to avail themselves of the American Admiralty Courts whenever some particular litigant thought that the American law would be more favorable to his case than the law of his home forum. Why should our already congested courts hear and determine controversies between non-taxpayers who have a common forum and law?

The petitioners here, by failing to urge any abuse of discretion in declining jurisdiction, tacitly concede that if the question of the retention or rejection of jurisdiction was discretionary, it was well exercised. It is, therefore, unnecessary to argue the question, as the finding of the Circuit Court of Appeals in that regard is not here questioned.

CONCLUSION.

THE DECREES OF THE CIRCUIT COURT OF APPEALS SHOULD BE AFFIRMED WITH COSTS.

Respectfully submitted,

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Buffalo, New York, February, 1932.

SUPREME COURT OF THE UNITED STATES.